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7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10	LEANDER "ANDY" LODI, an 11 Individual d/b/a AMERICAN 12 MUSCLE, 13 Plaintiff, 14 vs. 15 AMERICAN MUSCLE SPORTS 16 NUTRITION COMPANY, LLC; 17 SENSATUS LLC, a Nevada Limited 18 Liability company incorrectly sued as incorrectly sued as RUNIT CONSULTING, LLC; and DOES 1-10 inclusive, 19 Defendants.	CASE NO. 2:15-cv-02451-PA-AGR STIPULATED PROTECTIVE ORDER Judge Alicia G. Rosenberg United States Magistrate Judge Courtroom: B-8th Floor
20	SENSATUS LLC, a Nevada Limited 21 Liability company incorrectly sued as RUNIT CONSULTING, LLC 22 Counterclaimant, 23 vs. 24 LEANDER "ANDY" LODI, an 25 Individual d/b/a AMERICAN 26 MUSCLE, 27 Counterdefendant.	

1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set forth in
11 Section 12.3, below, that this Stipulated Protective Order does not entitle them to
12 file confidential information under seal; Civil Local Rule 79-5 sets forth the
13 procedures that must be followed and the standards that will be applied when a party
14 seeks permission from the court to file material under seal.

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17 B. GOOD CAUSE STATEMENT

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19 This action is likely to involve trade secrets, customer and pricing lists and
20 other valuable research, development, commercial, financial, technical and/or
21 proprietary information for which special protection from public disclosure and from
22 use for any purpose other than prosecution of this action is warranted. Such
23 confidential and proprietary materials and information consist of, among other
24 things, confidential business or financial information, information regarding
25 confidential business practices, or other confidential research, development, or
26 commercial information (including information implicating privacy rights of third
27 parties), information otherwise generally unavailable to the public, or which may be
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1 privileged or otherwise protected from disclosure under state or federal statutes,
2 court rules, case decisions, or common law. Accordingly, to expedite the flow of
3 information, to facilitate the prompt resolution of disputes over confidentiality of
4 discovery materials, to adequately protect information the parties are entitled to keep
5 confidential, to ensure that the parties are permitted reasonable necessary uses of
6 such material in preparation for and in the conduct of trial, to address their handling
7 at the end of the litigation, and serve the ends of justice, a protective order for such
8 information is justified in this matter. It is the intent of the parties that information
9 will not be designated as confidential for tactical reasons and that nothing be so
10 designated without a good faith belief that it has been maintained in a confidential,
11 non-public manner, and there is good cause why it should not be part of the public
12 record of this case.

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14 2. DEFINITIONS

15 2.1 Action: *Leander "Andy" Lodi v. Sensatus LLC, et al.* Case No.
2:15-cv-02451-PA-AGR

16 2.2 Challenging Party: a Party or Non-Party that challenges the
17 designation of information or items under this Order.

18 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
19 how it is generated, stored or maintained) or tangible things that qualify for
20 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
21 the Good Cause Statement.

22 2.4 Counsel: Outside Counsel of Record (as well as
23 their support staff).

24 2.5 Designating Party: a Party or Non-Party that designates information or
25 items that it produces in disclosures or in responses to discovery as
26 "CONFIDENTIAL."

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1 2.6 Disclosure or Discovery Material: all items or information, regardless
2 of the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced or
4 generated in disclosures or responses to discovery in this matter.

5 2.7 Expert: a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as
7 an expert witness or as a consultant in this Action.

8 2.8 Non-Party: any natural person, partnership, corporation, association, or
9 other legal entity not named as a Party to this action.

10 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
11 this Action but are retained to represent or advise a party to this Action and have
12 appeared in this Action on behalf of that party or are affiliated with a law firm which
13 has appeared on behalf of that party, and includes support staff.

14 2.10 Party: any party to this Action, including all of its officers, directors,
15 employees, consultants, retained experts, and Outside Counsel of Record (and their
16 support staffs).

17 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
18 Discovery Material in this Action.

19 2.12 Professional Vendors: persons or entities that provide litigation support
20 services (e.g., photocopying, videotaping, translating, preparing exhibits or
21 demonstrations, and organizing, storing, or retrieving data in any form or medium)
22 and their employees and subcontractors.

23 2.13 Protected Material: any Disclosure or Discovery Material that is
24 designated as “CONFIDENTIAL.”

25 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
26 from a Producing Party.

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1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.

7 Any use of Protected Material at trial shall be governed by the orders of the
8 trial judge. This Order does not govern the use of Protected Material at trial.

9 4. DURATION

10 Once a case proceeds to trial, all of the information that was designated as
11 confidential or maintained pursuant to this protective order becomes public and will
12 be presumptively available to all members of the public, including the press, unless
13 compelling reasons supported by specific factual findings to proceed otherwise are
14 made to the trial judge in advance of the trial. See Kamakana v. City and County of
15 Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause”
16 showing for sealing documents produced in discovery from “compelling reasons”
17 standard when merits-related documents are part of court record). Accordingly, the
18 terms of this protective order do not extend beyond the commencement of the trial.

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection.

21 Each Party or Non-Party that designates information or items for protection
22 under this Order must take care to limit any such designation to specific material
23 that qualifies under the appropriate standards. The Designating Party must designate
24 for protection only those parts of material, documents, items, or oral or written
25 communications that qualify so that other portions of the material, documents,
26 items, or communications for which protection is not warranted are not swept
27 unjustifiably within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose (e.g., to unnecessarily encumber the case development process or to impose
4 unnecessary expenses and burdens on other parties) may expose the Designating
5 Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it
7 designated for protection do not qualify for protection, that Designating Party must
8 promptly notify all other Parties that it is withdrawing the inapplicable designation.

9 **5.2 Manner and Timing of Designations.**

10 Except as otherwise provided in this Order (see, e.g., second paragraph of
11 section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery
12 Material that qualifies for protection under this Order must be clearly so designated
13 before the material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic
16 documents, but excluding transcripts of depositions or other pretrial or trial
17 proceedings), that the Producing Party affix at a minimum, the legend
18 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
19 contains protected material. If only a portion or portions of the material on a page
20 qualifies for protection, the Producing Party also must clearly identify the protected
21 portion(s) (e.g., by making appropriate markings in the margins).

22 A Party or Non-Party that makes original documents available for inspection
23 need not designate them for protection until after the inspecting Party has indicated
24 which documents it would like copied and produced. During the inspection and
25 before the designation, all of the material made available for inspection shall be
26 deemed "CONFIDENTIAL." After the inspecting Party has identified the
27 documents it wants copied and produced, the Producing Party must determine which
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1 documents, or portions thereof, qualify for protection under this Order. Then, before
2 producing the specified documents, the Producing Party must affix the
3 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
4 portion or portions of the material on a page qualifies for protection, the Producing
5 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
6 markings in the margins).

7 (b) for testimony given in depositions that the Designating Party
8 identify the Disclosure or Discovery Material on the record, before the close of the
9 deposition all protected testimony.

10 (c) for information produced in some form other than documentary
11 and for any other tangible items, that the Producing Party affix in a prominent place
12 on the exterior of the container or containers in which the information is stored the
13 legend “CONFIDENTIAL.” If only a portion or portions of the information
14 warrants protection, the Producing Party, to the extent practicable, shall identify the
15 protected portion(s).

16 **5.3 Inadvertent Failures to Designate.**

17 If timely corrected, an inadvertent failure to designate qualified information
18 or items does not, standing alone, waive the Designating Party’s right to secure
19 protection under this Order for such material.

20 Upon timely correction of a designation, the Receiving Party must make
21 reasonable efforts to assure that the material is treated in accordance with the
22 provisions of this Order.

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24 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

25 **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a
26 designation of confidentiality at any time that is consistent with the Court’s
27 Scheduling Order.

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1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37.1 et seq.

3 6.3 The burden of persuasion in any such challenge proceeding shall be on
4 the Designating Party. Frivolous challenges, and those made for an improper
5 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
6 parties) may expose the Challenging Party to sanctions. Unless the Designating
7 Party has waived or withdrawn the confidentiality designation, all parties shall
8 continue to afford the material in question the level of protection to which it is
9 entitled under the Producing Party's designation until the Court rules on the
10 challenge.

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12 7. ACCESS TO AND USE OF PROTECTED MATERIAL

13 7.1 Basic Principles.

14 A Receiving Party may use Protected Material that is disclosed or produced
15 by another Party or by a Non-Party in connection with this Action only for
16 prosecuting, defending, or attempting to settle this Action. Such Protected Material
17 may be disclosed only to the categories of persons and under the conditions
18 described in this Order. When the Action has been terminated, a Receiving Party
19 must comply with the provisions of section 13 below (FINAL DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a
21 location and in a secure manner that ensures that access is limited to the persons
22 authorized under this Order.

23 7.2 Disclosure of “CONFIDENTIAL” Information or Items.

24 Unless otherwise ordered by the court or permitted in writing by the
25 Designating Party, a Receiving Party may disclose any information or item
26 designated “CONFIDENTIAL” only to:

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4 (b) the officers, directors, and employees of the Receiving Party to
5 whom disclosure is reasonably necessary for this Action and who have signed the
6 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

10 (d) the court and its personnel;

11 (e) court reporters and their staff;

12 (f) professional jury or trial consultants, mock jurors, and
13 Professional Vendors to whom disclosure is reasonably necessary for this Action
14 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
15 A);

16 (g) the author or recipient of a document containing the information
17 or a custodian or other person who otherwise possessed or knew the information;

18 (h) during their depositions, witnesses, and attorneys for witnesses,
19 in the Action to whom disclosure is reasonably necessary provided: (1) the deposing
20 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
21 they will not be permitted to keep any confidential information unless they sign the
22 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise
23 agreed by the Designating Party or ordered by the court. Pages of transcribed
24 deposition testimony or exhibits to depositions that reveal Protected Material may
25 be separately bound by the court reporter and may not be disclosed to anyone except
26 as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

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5 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
6 IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

10 (a) promptly notify in writing the Designating Party. Such notification
11 shall include a copy of the subpoena or court order;

12 (b) promptly notify in writing the party who caused the subpoena or order
13 to issue in the other litigation that some or all of the material covered by the
14 subpoena or order is subject to this Protective Order. Such notification shall include
15 a copy of this Stipulated Protective Order; and

16 (c) cooperate with respect to all reasonable procedures sought to be
17 pursued by the Designating Party whose Protected Material may be affected.

18 If the Designating Party timely seeks a protective order, the Party served with
19 the subpoena or court order shall not produce any information designated in this
20 action as “CONFIDENTIAL” before a determination by the court from which the
21 subpoena or order issued, unless the Party has obtained the Designating Party’s
22 permission. The Designating Party shall bear the burden and expense of seeking
23 protection in that court of its confidential material and nothing in these provisions
24 should be construed as authorizing or encouraging a Receiving Party in this Action
25 to disobey a lawful directive from another court.

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1 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
5 produced by Non-Parties in connection with this litigation is protected by the
6 remedies and relief provided by this Order. Nothing in these provisions should be
7 construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to
9 produce a Non-Party's confidential information in its possession, and the Party is
10 subject to an agreement with the Non-Party not to produce the Non-Party's
11 confidential information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-
13 Party that some or all of the information requested is subject to a confidentiality
14 agreement with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this Action, the relevant discovery request(s), and a reasonably
17 specific description of the information requested; and

18 (3) make the information requested available for inspection by the
19 Non-Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this court within
21 14 days of receiving the notice and accompanying information, the Receiving Party
22 may produce the Non-Party's confidential information responsive to the discovery
23 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
24 not produce any information in its possession or control that is subject to the
25 confidentiality agreement with the Non-Party before a determination by the court.

26 Absent a court order to the contrary, the Non-Party shall bear the burden and
27 expense of seeking protection in this court of its Protected Material.

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2 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

3 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
4 Protected Material to any person or in any circumstance not authorized under this
5 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
6 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
7 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
8 persons to whom unauthorized disclosures were made of all the terms of this Order,
9 and (d) request such person or persons to execute the “Acknowledgment and
10 Agreement to Be Bound” that is attached hereto as Exhibit A.

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12 11. **INADVERTENT PRODUCTION OF PRIVILEGED**
13 **OR OTHERWISE PROTECTED MATERIAL**

14 When a Producing Party gives notice to Receiving Parties that certain
15 inadvertently produced material is subject to a claim of privilege or other protection,
16 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
17 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
18 may be established in an e-discovery order that provides for production without
19 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
20 as the parties reach an agreement on the effect of disclosure of a communication or
21 information covered by the attorney-client privilege or work product protection, the
22 parties may incorporate their agreement in the stipulated protective order submitted
23 to the court.

24

25 12. **MISCELLANEOUS**

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
27 person to seek its modification by the Court in the future.

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1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in this
4 Stipulated Protective Order. Similarly, no Party waives any right to object on any
5 ground to use in evidence of any of the material covered by this Protective Order.

6 12.3 Filing Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
8 only be filed under seal pursuant to a court order authorizing the sealing of the
9 specific Protected Material at issue. If a Party's request to file Protected Material
10 under seal is denied by the court, then the Receiving Party may file the information
11 in the public record unless otherwise instructed by the court.

12

13 13. FINAL DISPOSITION

14 After the final disposition of this Action, as defined in paragraph 4, within 60
15 days of a written request by the Designating Party, each Receiving Party must return
16 all Protected Material to the Producing Party or destroy such material. As used in
17 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
18 summaries, and any other format reproducing or capturing any of the Protected
19 Material. Whether the Protected Material is returned or destroyed, the Receiving
20 Party must submit a written certification to the Producing Party (and, if not the same
21 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
22 (by category, where appropriate) all the Protected Material that was returned or
23 destroyed and (2) affirms that the Receiving Party has not retained any copies,
24 abstracts, compilations, summaries or any other format reproducing or capturing any
25 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
26 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
27 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
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1 reports, attorney work product, and consultant and expert work product, even if such
2 materials contain Protected Material. Any such archival copies that contain or
3 constitute Protected Material remain subject to this Protective Order as set forth in
4 Section 4 (DURATION).

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6 14. Any violation of this Order may be punished by any and all appropriate
7 measures including, without limitation, contempt proceedings and/or monetary
8 sanctions.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2	DATED <u>1/26/16</u>	DATED <u>1/26/16</u>
3	By: <u>/s/ Ryan D. Saba</u> Ryan D. Saba Rosen Saba, LLP 9350 Wilshire Blvd., Suite 250 Beverly Hills, CA 90210 Phone: (310) 285-1727 Email: rsaba@rosensaba.com <i>Attorneys for Plaintiff and Counterdefendant</i> LEANDER "ANDY" LODI d/b/a AMERICAN MUSCLE	By: <u>/s/ Michael N. Cohen</u> Michael N. Cohen Joshua H. Eichenstein 9025 Wilshire Blvd., Suite 301 Beverly Hills, California 90211 Tel: 310-288-4500 Fax: 310-246-9980 Email: mcohen@cohenip.com Email: jeichenstein@cohenip.com
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14	FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.	
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16	DATED <u>February 3, 2016</u>	
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18	<u>Alicia G. Rosenberg</u>	
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20	United States District Magistrate Judge Alicia G. Rosenberg	
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 on January _____, 2016 in the case of *Leander "Andy" Lodi v. Sensatus LLC, et al.*
8 *Case No. 2:15-cv-02451-PA-AGR* I agree to comply with and to be bound by all
9 the terms of this Stipulated Protective Order and I understand and acknowledge that
10 failure to so comply could expose me to sanctions and punishment in the nature of
11 contempt. I solemnly promise that I will not disclose in any manner any information
12 or item that is subject to this Stipulated Protective Order to any person or entity
13 except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Central District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action. I hereby appoint _____ [print or
18 type full name] of _____ [print or type
19 full address and telephone number] as my California agent for service of process in
20 connection with this action or any proceedings related to enforcement of this
21 Stipulated Protective Order.

22 Date:

23 | City and State where sworn and signed:

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25 Printed name:

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